

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

Benjamin Jesse Jackson, III,)	
)	Civil Action No. 6:10-3128-RMG-KFM
Plaintiff,)	
)	<u>REPORT OF MAGISTRATE JUDGE</u>
vs.)	
)	
Sheriff H. Wayne DeWitt; Mr. McElvogue;)	
Mrs. McElvogue; Sgt. Sheets; PFC Menzie;)	
PFC Sports; Sgt. Jacumin,)	
)	
Defendants.)	
)	

This matter is before the court on the defendants' motion to dismiss and for more definite statement (doc. 30). The plaintiff, a detainee in the Hill-Finklea Detention Center ("HFDC") who is proceeding *pro se*, alleges claims against the sheriff and several correctional officers related to the conditions of his confinement.

Pursuant to the provisions of Title 28, United States Code, Section 636(b)(1)(B), and Local Rule 73.02(B)(2)(d), D.S.C., this magistrate judge is authorized to review all pretrial matters in cases filed under Title 42, United States Code, Section 1983.

On March 24, 2011, the defendants filed their motion to dismiss and for more definite statement. On March 25, 2011, pursuant to *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975), the plaintiff was advised of the summary dismissal procedure and the possible consequences if he failed to respond adequately. On April 1, 2011, the plaintiff filed his amended complaint.

The defendants first argue that the defendant identified as "Mrs. McElvogue" does not exist and should therefore be dismissed as a defendant. The "fictitious person's husband" is defendant Mr. McElvogue, the jail administrator at HFDC. The plaintiff states

in his amended complaint that he does not object to dismissing Mrs. McElvogue as a defendant. Accordingly, this portion of the defendants' motion should be granted.

The defendants further argue that the plaintiff does not make any personal allegations against defendant Sgt. Jacumin, who is a jail employee and not an administrator. They argue the plaintiff should be required to make a more definite statement as to the involvement of this defendant. In response to the defendants' motion, the plaintiff filed an amended complaint. In the amended complaint, the plaintiff alleges that defendant Sgt. Jacumin took away the Stack-a-Bunk resulting in inmates sleeping on the floor, he has "censorship over the jail's lock up segregation," he does the disciplinary hearing reviews, and he runs the jail's grievance system. This court finds that the plaintiff has adequately amended his pleading to address the defendants' concerns.

Wherefore, based upon the foregoing, it is recommended that the defendants' motion (doc. 30) be granted in part.

s/Kevin F. McDonald
United States Magistrate Judge

April 6, 2011

Greenville, South Carolina